


INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	STATUS: Effective	POLICY NUMBER: WASTE-0063-NPD	
AGENCY NONRULE POLICY DOCUMENT	AUTHORIZED: <i>Thomas W. Easterly, Commissioner</i>		
	SUPERSEDES: <i>New</i>	ISSUING OFFICE(S): Underground Storage Tank Branch; Office of Land Quality	
	ORIGINALLY EFFECTIVE: March 15, 2014	RENEWED/REVISED:	

Disclaimer: This Nonrule Policy Document (NPD) is being established by the Indiana Department of Environmental Management (IDEM) consistent with its authority under IC 13-14-1-11.5. It is intended solely to provide guidance and shall be used in conjunction with applicable rules or laws. It does not replace applicable rules and laws, and if it conflicts with these rules or laws, the rules or laws shall control. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate State Environmental Board, and may be put into effect by IDEM 30 days afterward. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM also will submit the policy to the Indiana Register for publication.

1.0 PURPOSE

This policy interprets and supplements the rules in the Indiana Administrative Code at 328 IAC 1 (ELTF rule) concerning payment of corrective action and third party liability claims from the Excess Liability Trust Fund (ELTF) arising out of releases of petroleum products from underground storage tanks (USTs). This policy will assist IDEM in providing consistent and efficient administration of ELTF claims and clarify procedures and reimbursement costs for ELTF applicants. IDEM is authorized to administer the ELTF in accordance with the Indiana Code, IC 13-23-7, IC 13-23-8, and IC 13-23-9.

2.0 SCOPE

This policy applies to IDEM's administration and payment of corrective action and third party liability claims from the ELTF arising out of petroleum releases from registered USTs.

This policy applies to those costs accrued for work performed after the effective date of this policy. The rates and guidance presented are not retroactive.

3.0 SUMMARY

This policy interprets and supplements IDEM's rules regarding administration and payment of claims against the ELTF to satisfy liabilities incurred by owners and operators of petroleum USTs for corrective action pursuant to IC 13-23-13-8. This policy addresses the following:

- Pre-approval of request for proposals (RFPs) for corrective action;
- Reimbursable costs and required documentation; and
- Guidance concerning the application for reimbursable costs.

Supplemental guidance provided in this NPD is meant to create administrative efficiencies for both IDEM in its administration and payment of claims against the ELTF and for applicants seeking reimbursement for costs.

4.0 DEFINITIONS

The definitions in IC 13-11-2, 329 IAC 9-1, and 328 IAC 1-1 apply to this nonrule policy.

- 4.1. "Applicant" – The entity eligible to receive payment for corrective action costs associated with a confirmed release of petroleum from a regulated UST system and who submitted a claim to the ELTF for reimbursement.
- 4.2. "IDEM Claim Reviewer" – The IDEM staff person that reviews ELTF claims for reimbursement of corrective action costs associated with a confirmed release.
- 4.3. "Nonrule policy" - The term assigned by IDEM to those policies identified in IC 13-14-1-11.5 as any policy that:
 - i. Interprets, supplements, or implements a statute or rule;
 - ii. Has not been adopted in compliance with IC 4-22-2;
 - iii. Is not intended by IDEM to have the effect of law; and
 - iv. Does not apply solely to the internal IDEM organization.

5.0 ROLES

- 5.1. "ELTF Applicant" – The ELTF Applicant should provide a copy of the IDEM-issued technical approval documentation for the actual costs incurred (for example, the Site Characterization approval letter, Corrective Action Plan approval letter, etc.), a description of each specific item, the number of units for each item, completed application and pay requests that include the associated rate identified in this non-rule policy if applicable, and other supporting documentation, as necessary.
- 5.2. "IDEM Claim Reviewer" - The IDEM Claim Reviewer will review costs included in individual claims to determine if those costs were: 1) associated with activities that have technical approval; and 2) were appropriate given the activity. The IDEM Claim Reviewer will review claims in a manner consistent with this nonrule policy document and 328 IAC 1.

6.0 POLICY

- 6.1. **Pre-approval of Request for Proposals (RFPs) for Corrective Action [328 IAC 1-3-1.3, 328 IAC 1-3-5(e)]**

In accordance with 328 IAC 1-3-1.3(a), the administrator of ELTF shall determine if the work to be performed or the work already performed, or a portion thereof, under the approved corrective action plan (CAP) is cost effective. The administrator may request the applicant to submit additional information to substantiate the projected work and projected costs.

The maximum costs for the work done for approved corrective action are reimbursed on the basis of the lowest of three comparable, competitive bids for the work specified in the approved CAP. Bids for the work specified in the CAP must include bids for system equipment, construction, materials and supplies (including those items reasonably foreseeable for the function and/or protection of the remediation system such as extension cords, heaters, fire extinguishers, etc.), system installation, system operation and maintenance, long-term monitoring, restoration, and labor. However, separate bids may be obtained for cost of installation, system operation and maintenance, long-term monitoring, and labor. Tasks that are to be self-performed should be noted and excluded from the RFP. Copies of the RFP for implementation of the CAP that were sent to each vendor must be submitted to IDEM pursuant to 328 IAC 1-3-5(e). Each RFP and bid submittal will be required to show a line item breakdown of the tasks to be performed in order to verify tasks are eligible for reimbursement.

Often, the RFPs are not adequately documented or do not adequately delineate each task or activity necessary under an approved CAP. This leads to delay in the processing of CAP-related costs. In order to eliminate this delay, ELTF Applicants should consider submitting RFPs for corrective action work along with submission of the proposed CAP for IDEM's review and approval.

Pre-approval of RFPs during IDEM's review of the proposed CAP will allow IDEM ELTF staff to ensure that the submitted RFPs adequately detail the scope of work to be performed in the proposed CAP and will also allow IDEM ELTF staff to assess the cost effectiveness of the particular actions specified in the RFP. Prior approval of RFPs by IDEM will facilitate more efficient reimbursement of claims by IDEM ELTF staff. RFPs that have prior approval, and the IDEM-issued documentation illustrating that approval, should be included with all submitted claims for reimbursement of corrective action work costs.

6.2 Reimbursable Costs and Documentation of Costs (328 IAC 1-3-5)

Reimbursable costs are actual monetary amounts paid or incurred for work performed by an owner or operator of a petroleum UST in response to a fund qualifying occurrence. The existing rule language is unclear concerning the extent of what is included in the reimbursable costs listed at 328 IAC 1-3-5(b) and 328 IAC 1-3-5(e). The ambiguity in the existing rule has resulted in: (1) confusion for ELTF applicants about what work or items will be reimbursed; (2) unnecessary burdens on ELTF applicants to maintain excessive amounts of documentation for minor dollar amounts relating to incidental items that are often purchased in bulk for use at many different sites and that are routinely used during site investigation and corrective action work; and (3) inefficient reimbursement and review procedures in the administration of claims against the ELTF.

In order to resolve confusion, minimize unnecessary burdens, and improve the efficiency of IDEM's reimbursement and review procedures, IDEM provides interpretations and supplemental guidance concerning reimbursable costs as discussed in 328 IAC 1-3-5 with the incidental materials, supplies and equipment listed or characterized below. Applicants may either: (1) submit necessary documentation (receipts, invoices, etc) and claim these costs individually; or (2) request reimbursement up to the maximum unit rates provided below without having to maintain or submit the documentation for each piece of equipment, material or supply being claimed. The maximum unit rates provided below include available mark-up; as such, no additional mark-up will be reimbursed if the maximum unit rate option is chosen.

- 6.2.1. **SITE CHARACTERIZATION, Boring and Monitoring Well Installation:** The maximum unit rate for incidental equipment, materials and supplies associated with drilling, logging, soil sampling, installation, development, and ground water sampling of monitoring wells during site characterization is \$30 per boring/monitoring well installation. The unit rate covers incidentals including, but not limited to, gloves, plastic baggies, bubble wrap, paper towels, trash bags, closed system purge-and-trap samplers, distilled water, and ice. Applicants will no longer be required to submit individual receipts for these incidental items if the Applicant chooses to use the maximum unit rate option.
- 6.2.2. **SITE CHARACTERIZATION and CORRECTIVE ACTION TECHNOLOGIES, Quarterly Monitoring Well Sampling:** The maximum unit rate for incidental equipment, materials and supplies associated with quarterly monitoring well sampling (including low flow sampling when approved by IDEM technical staff) is \$30 per well. The unit rate includes incidentals including but not limited to, bailers, bailer line, plastic baggies, paper towels, bubble wrap, trash bags, gloves, distilled water bladders, sample tubing, and ice. Applicants will no longer be required to submit individual receipts for these items if the Applicant chooses to use the maximum unit rate option. Please note that IDEM will only reimburse at this unit rate or the bailer rental rate of \$20, but will not reimburse both rates for sampling activities claimed at the same monitoring well.
- 6.2.3. **SITE CHARACTERIZATION and CORRECTIVE ACTION TECHNOLOGIES, Low Flow Sampling:** The maximum unit rate for equipment, materials and supplies associated with low flow sampling is \$350 per day. In order for low flow sampling costs to be reimbursed, the Applicant must have documentation from the IDEM LUST Project Manager showing approval of this sampling method. The maximum unit rate includes, but is not limited to, the multimeter, bladder pump, pump controller, tubing,

and flow-through cell. Applicants will no longer be required to submit individual receipts for these items if the Applicant chooses to use the maximum unit rate option.

- 6.2.4. SITE CHARACTERIZATION and CORRECTIVE ACTION TECHNOLOGIES, Slug Testing Equipment: The maximum unit rate for equipment, materials and supplies associated with slug testing is \$160 per day. The maximum unit rate includes, but is not limited to, the pressure transducer, data logger, and flow-through cell. Applicants will no longer be required to submit individual receipts for these items if the Applicant chooses to use the maximum unit rate option.
- 6.2.5. SITE CHARACTERIZATION and CORRECTIVE ACTION TECHNOLOGIES, Miscellaneous Equipment Rental: Costs for specified equipment rental, when such equipment is required for necessary site work, will be reimbursed based on a maximum daily rate as follows:
- i. Drum vacuum at \$50 per day.
 - ii. Hammer drill at \$20 per day.
 - iii. Laser survey equipment at \$90 per day.
 - iv. Metal detectors at \$20 per day.
 - v. Peristaltic pump at \$35 per day.
 - vii. Vacuum air sampling pump at \$60 per day.

Applicants will no longer be required to submit individual receipts for these pieces of equipment if the Applicant chooses to use the daily rate option.

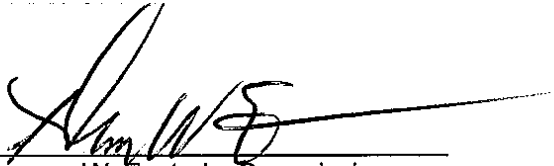
- 6.2.6. CORRECTIVE ACTION TECHNOLOGIES, Operation and Maintenance Incidental Equipment, Material and Supplies: Costs for incidental equipment, materials and supplies needed for the operation and maintenance (O&M) of remediation systems will be reimbursed at a maximum unit rate of \$10 per day when O&M on a remediation system is required. This rate will include incidentals, including but not limited to, the following: hose clamps, tape of any kind, light bulbs, batteries, nuts & bolts, paper towels, trash bags, brushes, absorbent pads, distilled water, and reasonable use of necessary meters or gauges not otherwise addressed in this policy or 328 IAC 1. Applicants will no longer be required to submit individual receipts for these items for work done on approved remediation systems if the Applicant chooses to use the maximum daily rate option. If the Applicant chooses to submit receipts for gauge and meter use instead of utilizing the daily rate option, ELTF will require additional documentation of the purchase price of the meter or gauge to ensure that ELTF is not violating the requirements of 328 IAC 1-3-5(e), which states that "Lease or rental on equipment will not be reimbursed above the purchase price." The Applicant must also demonstrate how the requested rate was calculated in relation to the purchase price of the equipment.
- 6.2.7. CORRECTIVE ACTION TECHNOLOGIES, Miscellaneous Remediation Materials and Supplies: Remediation system materials and supplies that are not considered incidental in accordance with Section 6.2.6 of this NPD will still require documentation for reimbursement. Items that IDEM does not consider to be incidental include drums, oil, bag filters, acid, and any items necessary to address unforeseen remediation system repairs such as issues involving computer controls, telephone hookups, pumps or piping, or other mechanical breakdowns. Additionally, materials and supplies that are necessary for the function and/or protection of the remediation system such as heaters and fire extinguishers are not considered incidental. The costs of these items must be included in the total cost of the system and included in the RFPs as part of the three bid process for work specified in the approved CAP.
- 6.2.8. Clarification of what constitutes "decontamination equipment": The equipment rental rate (based on daily rate) for "decontamination equipment" includes distilled water along with the listed items in the ELTF rule, which are buckets, brushes, and detergent.

- 6.2.9. Costs related to report preparation: IDEM requires submittal of technical reports in both digital and paper format. IDEM will reimburse for “report preparation” materials at the current IDEM copy rate of \$0.15 per page, or \$0.30 for double-sided copies. This per page rate for report preparation materials includes, but is not limited to, paper, ink, toner, report finishing materials (binding, covers, folders, etc.) and CDs.
- 6.2.10. Clarification regarding “hand tool”: Equipment purchases that are not reimbursable from the ELTF include hand tools pursuant to 328 IAC 1-3-5(d)(6). Examples of “hand tools” that are not reimbursable from the ELTF include the following non-exhaustive list: hammers, wrenches, screwdrivers, jacks, pry bars, hand saws, levels/transits, surveyor’s rod, measuring wheels, measuring tapes, flashlights, knives, shovels, axes, hand-augers, and penetrometers.

7.0 REFERENCES

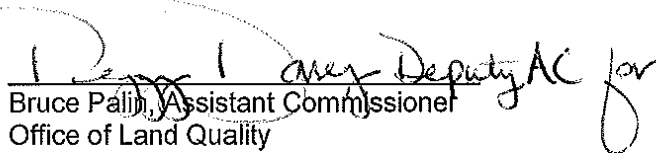
- 7.1. Indiana Administrative Code:
 - 7.1.1. [328 IAC 1. Payment of Corrective Action and Third Party Liability Claims from the Excess Liability Trust Fund](#)
 - 7.1.2. [329 IAC 9. Underground Storage Tanks](#)
- 7.2. Indiana Statutes:
 - 7.2.1. [IC 13-11-2. Definitions](#)
 - 7.2.2. [IC 13-23-7. Underground Petroleum Storage Tank Excess Liability Fund](#)
 - 7.2.3. [IC 13-23-8. Use of Money in Excess Liability Fund](#)
 - 7.2.4. [IC 13-23-9. Payment from Excess Liability Fund](#)
 - 7.2.5. [IC 13-23-13-8. Liability of owner or operator for costs of corrective action; subrogation; actions to recover costs](#)

8.0 SIGNATURES



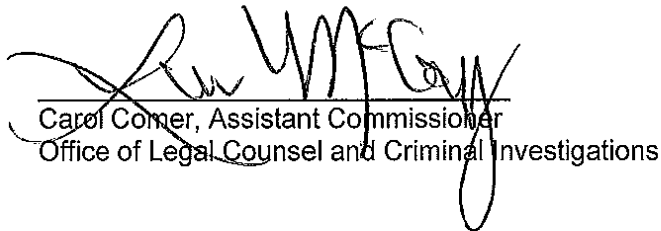
Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

MARCH 20, 2014
Date



Deputy AC for
Bruce Palin, Assistant Commissioner
Office of Land Quality

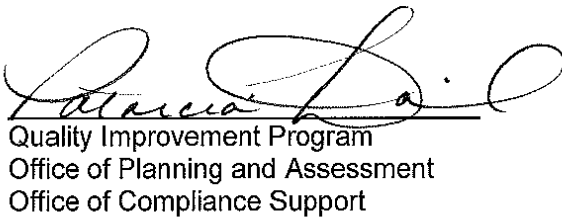
MARCH 18, 2014
Date



Carol Comer, Assistant Commissioner
Office of Legal Counsel and Criminal Investigations

3/18/2014
Date

This policy is consistent with agency requirements.



Patricia La...,
Quality Improvement Program
Office of Planning and Assessment
Office of Compliance Support

MARCH 17, 2014
Date